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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

STUART R. CRANE and BARBARA CRANE, his wife,
Appellants,

-vs-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JERRY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMER WOJO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, Jointly and Severally,
Appellees,

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT

APPENDIX OF APPELLANTS

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QUESTIONS PRESENTED

I.

MAY THE STATE OF MICHIGAN PRECLUDE A PLAINTIFF FROM ASSERTING FEDERAL CIVIL RIGHTS CLAIMS GENERALLY, AND 42 USC §1983 CLAIMS SPECIFICALLY, IN THE STATE COURTS OF MICHIGAN WHEN THE CLAIM IS BASED UPON THE WRONGFUL ACTS OF INDIVIDUAL EMPLOYEES OF THE STATE OF MICHIGAN, ITS BRANCHES OR DEPARTMENTS, ON THE GROUNDS OF GOVERNMENTAL IMMUNITY, REGARDLESS OF THE CAPACITY IN WHICH THE EMPLOYEES ACTED OR THE NATURE OF THEIR ACTS?

II.

MAY THE STATE OF MICHIGAN PRECLUDE A CIVIL RIGHTS PLAINTIFF WHO BRINGS A CAUSE OF ACTION UNDER 42 USC §1983 FROM A TRIAL BY JURY?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
INDEX OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2-3
STATEMENT	3-17
I.	3-16
Question I is Substantial	8-16
II. Question II is Substantial	16-17
CONCLUSION	17
APPENDICES	
Appendix A	1a
Appendix B	3a
Appendix C	5a
Appendix D	7a
Appendix E	26a

INDEX OF AUTHORITIES

Federal Cases:	Page
Baskin v. *Parker*, 588 F 2d 965 (5th Cir, 1979)	13
Batista v. *Weir*, 340 F 2d 74 (5th Cir. 1965)	13
Conley v. *Gibson*, 355 US 41 2 L Ed 2d 80, 78 S Ct 99 (1957)	9
Curtis v. *Loetker*, 514 US 189, 39 L Ed 2d 260, 94 S Ct. 1005 (1974)	16
Ex Parte Young, 209 US 123, 52 L Ed 714, 28 S Ct 441 (1908)	9, 10
Garrick v. *Denver*, 658 F 2d 1021 (5th Cir. 1981) ...	13
International Prisoners Union v. *Rizzo* 356 F. Supp 806 (E D Pa 1973)	11
Maine v. *Thiboutot*, 448 US1, 65 L Ed 2d 611, 101 S Ct 250 (1980)	12
Mairon v. *Igleburger*, 584 F 2d 767 (6th Cir. 1978), cert den US 59 L Ed 2d 78, 99 S Ct. 1027)	11
Martinez v. *California* 444 US 277, 62 L Ed 481, 100 S Ct. 553 (1980)	11
Meyers v. *Anderson* 238 US 368, 59 L Ed 1349, 35 S Ct. 432 (1915)	10, 11
Monell v. *Department of Social Services*, 436 US 658, 56 L Ed 611, 98 S Ct 2018 (1978)	12
Scheuer v. *Rhodes*, 416 US 232 40 L Ed 2d 90, 84 S Ct. 168 (1974)	8, 9, 10
Sexton v. *Gribbs*, 327 F. Supp 134 affd. 446 F 2d 9 V 4, Cert den, 404 US 1062, 30 L Ed 751, 92 S Ct. 733	12
Sullivan v. *Little Hunting Park, Inc.* 396 US 229, 240 L Ed 2d 386, 90 S Ct. 400 (1969)	13
Texas v. *Kutt* 330 US 387, 91 L Ed 867, 67 S Ct. 810 (1949)	11
Wade v. *Haynes* 663 F 2d 778 (5th Cir 1981)	13

INDEX OF AUTHORITIES—(Cont'd)

State Cases: Page

Armstrong v. *Ross Township* 82 Mich App 77, 266 NW 2 d 674 (1978) 12

Bandfield v. *Wood*, 104 Mich App 279 (1981) 15

Bush v. *Oscoda Area*, 405 Mich 716, 275 NW 2d 521 (1979) 15

Hirych v. *State*, 376 Mich 384, 136 NW 2d 910 (1978) 12

Lockaby v. *Wayne County* 406 Mich 65, 276 NW 2d 1 (1979) 15

McDowell v. *State Highway Commission*, 365 Mich 268, NW 2d (1961) 15

Niever v. *New York City Transit Authority* 91 Misc 2 d 214, 397 NYS 2d 531 (1977) 12

Parker v. *City of Highland Park* 404 Mich. 183, 273 NW 2d 521 (1978) 14

Pichette v. *Manistique Public Schools*, 50 Mich App 770, 213 NW 2d 784 (1973) 14

Riedy v. *Sperry* 83 Wis. 2d 158, 265 NW 2d 674 (1978). 12

T & M Homes Inc. v. *Mansfield*, 162 NJ Super 497, 393 A 2d 613 (1979) 12

Thomas v. *State Department of Highways*, 398 Mich. 1, 247 NW 2d 530 (1976) 15

Williams v. *City of Detroit* 364 Mich 231 NW 2d (1961) 14

CONSTITUTIONAL* AND STATUTORY PROVISIONS

United States Statutes:

38 USC §1252 ..... 2, 16

42 USC §1983 ..... 2, 3, 4, 6, 8, 11, 12, 14

* The Complaint alleges violations of Amendments 1, 4, 5, 8 and 13 to the Constitution of the United States. The effect of the action of the Courts below is to deny Plaintiff's a Jury Trial (Amendment 7 U.S. Constitution, Michigan, Constitution of 1963, Article 14). Because of the summary nature of the proceedings below these questions were not expressly ruled upon.

INDEX OF AUTHORITIES—(Cont'd)

United States Statutes: Page

42 USC §1986 ..... 6, 11

42 USC §1985(3) 11

42 USC §1982 13

28 USC §1343 14

Michigan Statutes (Michigan Compiled Laws):

MCL 600.1401, et seq. 4, 15

MCL 600.6419 3

MCL 600.6440 3

MCL 600.6443 3

Miscellaneous:

Governmental Immunity After Parker and Perry, The King can do some wrong, Vol 1982 Detroit College of Law Review, Issue 1, p. 1 15

72 Mich Law Rev 187 (1973) 15

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Appellees,

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Order of Accelerated Judgment of the Circuit Court for the County of Wayne, State of Michigan, entered March 6, 1981, is not reported and is attached hereto as App. C. (*infra*. p. 5a). Said Order granted Accelerated Judgment and dismissed the Complaint. The Order of the Court of Appeals of the State of Michigan affirming the Order of said Circuit Court entered June 18, 1982 is not reported and is attached hereto as App. B. (*infra*. p. 3a). The Order of the Supreme Court of the State of Michigan entered April 20, 1983 denying Application for Leave to Appeal the Order of said Court of Appeals is unreported and is attached as App. A. (*infra*. p. 1a).

JURISDICTION

The Order of the Supreme Court of the State of Michigan (App. A. *infra*. p. 1a) was entered April 20, 1983.

Said Order, denying Application for Leave to Appeal had the effect of dismissing Plaintiffs' Complaint and was an Order of the Court of highest and final jurisdiction in the State of Michigan.

A Notice of Appeal to this Court and Proof of Service thereof, was filed on July 8, 1983.

The orders above described (See OPINIONS BELOW, *supra.)* denied that the Courts of general jurisdiction in Michigan had subject matter jurisdiction over the causes of action alleged in the Complaint (Apps. A, B, C *infra*. pp. 1-5a).

Plaintiff's claim that the Complaint pleads causes of action under 42 USC §1983 and violation of United States Constitutional guarantees and rights of Plaintiffs by the State of Michigan and certain individuals, jointly and severally. (The State not being alleged to be liable except in Count VII of the Complaint).

The jurisdiction of this Court is involved under 28 USC §1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Complaint raised violations of Federal Constitutional Rights (see, infra. p. 6) and the decision of the Courts below in effect denies the right to trial by Jury. (See, infra. pp 16-17). Because of the summary nature of the proceedings below no express decision on these matters was made.

42 USC 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The relevant provision of the Court of Claims Act of the State of Michigan (MCL, 600.6401) provide:

" . . . the jurisdiction of the court of claims as conferred . . . by this chapter . . . against the state . . . shall be exclusive. MCL 600.6419

"No claimant may be permitted to file a claim . . . who has an adequate remedy . . . in the federal courts . . ." MCL 600.6440

"The case shall be heard by the judge without a jury." MCL 600.6443

STATEMENT

I.

The Complaint (App. D infra. P. 7-25a) filed in the Circuit Court for the County of Wayne, State of Michigan named as Defendants the State of Michigan, named individuals, unknown agents, unknown persons and unknown officers.

From the allegations made in the Complaint, a proper cause of action was pled under 42 USC §1983 against all

Defendants, (state associated individuals) [1] except the State of Michigan which is not a "person".

The Complaint contained nine counts (I-IX) and twelve introductory paragraphs which were incorporated by reference in each count. Allegations against the State of Michigan were made only in Count VII. The remainder of the Complaint sought damages against individuals only.

No Answer was filed and there was no evidence before the Wayne County Circuit Court, a Court of original and general jurisdiction in Michigan.

Upon Motion of Defendants, made pursuant to Michigan General Court Rule 116 (GCR 116), Accelerated Judgment was granted and the Complaint was dismissed by Order of the Court (App. C *infra*., p. 5a) on the grounds that the Court lacked jurisdiction over the subject matter of the Complaint.

The Courts below have stated that the action was, in effect, against the State and therefore could be pursued only in the Court of Claims. (Apps. A B and C, infra., p. 1-5a)

The Michigan Court of Claims was established by, and its jurisdiction defined by, Michigan Public Act No. 170, 1964 (MCL 600.1401 et. seq.), which explicitly prohibits the Court of Claims from hearing actions which may be brought in the Federal Courts. The instant action was brought pursuant to 42 USC §1983, and therefore outside the statutory jurisdiction of the Michigan Court of Claims. MCL 600.6440. Furthermore, notwithstanding the prohibition of Federal statutory actions in the Michigan Court of Claims, jury trials are not allowed in that Court.

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[1] The term "state associated individuals" is used herein generically from time to time because the terms "officers, employees" are often used as words of art in immunity cases and decisions are made to depend on the word.

From the foregoing, the plight of Appellants is obvious: Their allegations of numerous forms of misconduct by State agents were dismissed by the Court of original and general jurisdiction on the ground that the action properly laid in a Court of limited jurisdiction which first, would not afford a jury, and second, was prohibited by statute from hearing the case. Appellants are therefore precluded from a trial by jury, if the case were heard in the Court of Claims, and precluded from a State forum entirely since the action is statutorily outside the jurisdiction of the Court of Claims.

Since this Court does not decide whether Michigan law is correctly determined by a final decision of its highest court, the question posed is whether Michigan may, by legislation or judicial interpretation of its common law, preclude a plaintiff in a civil rights case from a trial by jury or a forum all together, when the action is brought against State associated individuals.

To analyse the effect of the judicial action below, coupled with the statutorily limited jurisdiction of the Court of Claims, it is necessary to examine the Complaint in some detail.

Count I alleges actions of persons unknown in issuing warrants which falsely accused Appellants of a crime and alleges that the acts complained of were intentional and malicious. Judgment is sought against persons unknown.

Count II alleges that warrants were issued upon the false statements of Appellees Jury and Foremouth which imputed a crime to Appellants and constituted libel perse, thus, denying Appellants due process.

Count III alleges a cause of action against Appellees Goodman and Jury only for false statement in tax liens.

Count IV complains of a search warrant based upon the affidavit of Appellee Smith which affidavit was used to obtain a warrant when Smith knew the same to be insufficient, wrongful, malicious and unjustified. Judgment is sought against Appellee Smith only.

Count V alleges that Appellee Smith caused and permitted the issuance of a criminal search warrant which was unconstitutionally broad and that his acts were intentional, malicious, wrongful, unjustified and contrary to law. Judgment is sought against Smith only.

Count VI alleges a criminal trespass by individual Appellees and unknown officers, seizure of property not described in the Warrant used by the officers and other acts not authorized by the Warrant under which they acted. Judgment is sought against all Appellees, except the State of Michigan, Goodman, Jury and Faremouth.

Count VII alleges that an unknown agent, without a warrant, entered appellant's premises and removed a box of records. Judgment is sought against the state of Michigan and the unknown agent.

Count VIII alleges all individual defendants jointly and severally violated the civil rights of Appellants contrary to 42 USC §1983 and incorporates the allegations of the other Counts. Judgment is sought against the individual Appellees only.

Count IX is similar to Count VIII except that a violation of 42 USC §1986 is alleged. Judgment is sought against the individual Appellees only.

Thus, only Count VII seeks recovery against against the State of Michigan. Each Count incorporates by reference the numbered paragraphs of the preceding Counts, and the twelve (1-12) introductory paragraphs of the Complaint. (App. D *infra.*, pp. 5-27a, lead para. of each Count.)

Paragraph 12 of the general introduction of the Complaint alleges violations of the "1st, 4th, 5th, 8th, 13th and 14th Amendments to the Constitution of the United States.

The Order of the Circuit Court (App. C, *infra.*, p. 5a) does not address specifically the matter of whether the "lack of subject matter" jurisdiction extends to claims relating to these federal questions or to 42 USC §1983 or §1986 actions.

In the certified transcript of proceedings in the Circuit Court for the County of Wayne, State of Michigan, held on March 9, 1981 (App. E, *infra.*, p. 30a) the Honorable Thomas Roumell, Circuit Judge, stated:

> THE COURT: You can stop right there because that's what it was, determine whether or not this Court has jurisdiction or whether the Court of Claims has jurisdiction to hear your case and your claim for damages.
>
> You see, no matter how you couch it with nice words which suggest Federal jurisdiction and Federal questions, in a case of this kind arising out of the set of facts that are here involved that you have urged this case and you have urged in other cases, it all comes out to money damages that you seek.
>
> Now, if you were seeking for equitable relief such as a restraining order or to do something or not to do something, you're in the right court, but under the circumstances if you're looking for money, your claim has got to be in the Court of Claims first. That's where we're at, sir.

Under the circumstances, there being no other statement of the applicable law appearing in the proceedings in the Courts below, there is no Court of original general jurisdiction in Michigan that has jurisdiction over claims against individuals associated with the State of Michigan regardless of whether or not the individuals are acting within or without the scope of their authority, under color of law, in good faith or however acting, if money damages are sought.

QUESTION I IS SUBSTANTIAL

What has resulted in the Courts below is not easy to analyze. Was the State the real party in fact? Is the State a necessary party? Are the individuals totally immune? Does the Court of Claims have jurisdiction over the individuals, notwithstanding a statute to the contrary? There being no substantial record below, it is difficult to understand these questions.

Appellants assert that the dismissal of the instant case is analogous to the dismissal of the Complaint in *Scheuer* v *Rhodes*, 416 US 232, 40 L Ed 2d 90, 94 S Ct 168 (1974). In that case, the Federal District Court dismissed a 42 USC §1983 action on the ground that the action naming certain state government officials as defendants was, in substance and effect, an action against the State of Ohio and barred by the Eleventh Amendment to the Constitution of the United States. The Court of Appeals affirmed and also held that the Ohio common law of governmental immunity barred the action because it was against state officials. The Supreme Court reversed.

This Court specifically noted that no answer had been filed. (*id.* 235) The complaints were described as follows:

> ". . . In essence the defendants are alleged to have 'intentionally, recklessly, wilfully and wantonly caused an unnecessary deployment of the Ohio National Guard on the Kent State campus and, in the same manner, ordered the Guard members to perform allegedly illegal actions which resulted in the death of plaintiffs' decedents. Both Complaints allege the action was taken "under color of state law" and that it deprived the decedents of their lives and rights without due process of law. Fairly read, the complaints allege that each of named defendants, in undertaking such actions, acted either outside the scope of his respective office or, if within the scope, acted in an arbitrary manner, grossly abusing the lawful powers of office. *id*, 235

The Court stated:

> ". . . The primary question presented is whether the District Court acted prematurely and hence erroneously in dismissing the complaint on the stated ground, thus precluding any opportunity for the plaintiffs by a subsequent proof to establish a claim."

The Court reviewed the function of trial courts in ruling on motions to dismiss noting the usual rules that the issue is not whether the plaintiff will prevail but whether he is entitled to offer proof and that the allegations of the complaint are taken in the light most favorable to the pleader. The Court then quoted with approval *Conley* v *Gibson* 355 U S 41, 2 L Ed 2d 80, 78 S Ct 99 (1957) wherein it is said:

> "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *id.* U S 45-46

Using these guidelines this Court reversed the courts below and remanded the case for further proceedings. In so doing the Court rejected the District Court application of Eleventh Amendment protection at the stage of proceeding in that Court. In so doing this Court also rejected the Court of Appeals affirmance on the additional grounds of governmental immunity. As regards Eleventh Amendment protection for State officers, the Court observed that when a state officer acts under a state law in a manner violating the Federal Constitution:

> ". . . he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. . . . The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Scheuer* v *Rhodes, supra,* U S, 237 quoting from Ex Parte Young 209 U S 123, 52 L Ed 714, 28 S Ct 441 (1908)

As regards governmental immunity this Court in *Scheuer*, *supra*, reviewed the genesis of the doctrine and held it had no application at the stage of proceedings before the Court; that such immunities were qualified, that its availability was a fact question and that it could not override the paramount authority of the Federal Constitution.

The relevance of citation of Eleventh Amendment cases in the present matter is that the analysis of the courts in defining the scope of protection given individuals claiming a derivative protection thereunder when sued for violation of federal rights in general is based upon the same principles as are applied in analysis of governmental immunity protections allowed in civil rights cases against "persons" or individuals.

Simply put, "persons" cannot be clothed with immunity by reason of acting under the "color" of State law. That is the essence of 42 USC 1983. It is also stated that persons operating under the color of State law are liable in an "action at law" for depriving another of federal rights while so operating. Gargantuan efforts have been made to avoid plain words, principally under immunity arguments.

The attempted distinction between jurisdiction over equity actions and actions at law made in the Circuit Court in this case (App. C p. 5a., App. E p. 30a.) is not new. But, it was rejected some time ago by this Court. *Meyers* v *Anderson*, 238 US 368, 59 L Ed 1348, 35 S Ct 473 (1915), holding that *Ex Parte Young*, *supra*, applied in damage actions.

To have a basis for asserting that the law of governmental immunity deprives the courts of general jurisdiction in the State of Michigan of subject matter jurisdiction over matters alleged in the Complaint (App. D p. 7a.) it must be posited by the Courts below that:

1. Circuit Courts in Michigan (the courts of general original jurisdiction) have no jurisdiction over the State or State associated persons in actions at law for damages because of governmental immunity.

2. The State has waived for itself (and associated persons) this immunity (in this case subject matter immunity) only to the extent that claims for damages can be made in the Court of Claims of the State of Michigan.

3. These rules (1 and 2) prevail regardless of whether a federally guaranteed or granted right, privilege or immunity is asserted if a State associated person is sued in an action at law for damages.

4. No state of facts provable under the allegations of a Complaint can avoid these propositions.

Decision in this case should not be encumbered by the fact that the State was a named party. The Michigan Court Rules of 1963 (GCR 1963) provide for accelerated judgment where the court lacks jurisdiction of the subject matter over a person or property. The question as to subject matter jurisdiction was raised prior to a responsive pleading and judgment for lack of subject matter jurisdiction was granted. (See GCR 1963 116)

If the four propositions represent Michigan law they unconstitutionally deprive Appellants of due process and of their rights under 42 USC §1983 and §1986.

There is no doubt that congress has the right and has, as a matter of law, made federal rights enforceable in State Courts. *Texta* v *Kutt*, (1949) 330 U S 386, 91 L Ed 867, 67 S Ct 810.

It has been said:

> ". . . a state court could not refuse to enforce a claim under the Civil Rights Act." *International Prisoner's Union* v *Rizzo*, 356 F Supp 806 (E D Pa 1973)

This Court has held that 42 USC 1983 actions may be brought in State Courts. *Martinez* v *California* 444 U S 277, 62 L Ed 481, 100 S Ct 553 (1980) reh den, 445 U S 920, 63 L Ed 2d 606, 100 S Ct 252; holding conduct violating 42 USC §1983 and §1985(3) cannot be immunized under State

law; *Monell* v *Department of Social Services*, 436 U S 658. 56 L Ed 2d 611, 98 S Ct 2018 (1978); *Maine* v *Thiboutot* 448 U S 1, 65 L Ed 2d 555, 101 S Ct 250, (1980).

State courts have held themselves to have §1983 jurisdiction. *Niever* v *New York City Transit Authority*, 91 Misc 2d 214, 397 NYS 2d 531 (1977); *T & M Homes Inc.* v *Mansfield* 162 NJ Super 497. 393 A 2d 613, *Riedy* v *Sperry*, 83 Wis 2d 158, 265 NW 2d 674 (1978).

Michigan courts have entertained federal civil rights cases. *Armstrong* v *Ross Township*, 82 Mich App 77, 266 NW 2d 674 (1978); *Hirych* v *State*, 376 Mich 384, 136 NW 2d 910 (1965).

There is nothing in federal civil rights law that permits the distinction between legal and equitable actions made in this case by the courts of Michigan. In *Meyers* v *Anderson*, 238 U S 368, 59 L Ed 1349, 35 S Ct 432 (1915) it was held that damages were recoverable in actions based on violations of civil rights.

The "courts of law" have been liberal in granting actual damages under a variety of cases involving civil rights actions; including unreasonable searches and seizures; *Sexton* v *Gribbs*, 327 Fed Supp 134, affd 446 F 2d 904, cert den 404 U S 1062, 30 L Ed 751, 92 S Ct 733; emotional distress, embarassment and humiliation without proof of intent, *Mairon* v *Igleburger*, 584 F2d 767 (6th Cir 1978). cert den. U S, 59 L Ed 2d 78, 99 S Ct 1027. The rule as to whether Federal or State law on damages applies in §1983 actions has been stated as follows:

> "We believe that the benefits of the (Civil Rights) Acts were intended to be uniform throughout the United States, that the protection to the individual afforded by them was not intended by congress to differ from state to state, and that the amount of damages to be recovered by the injured individual was not to vary because of the law of the state in which the federal court suit

was brought. Federal common law must be applied to effect uniformity otherwise the Civil Rights Acts would fail to effect the purpose and ends which congress intended." *Batista* v *Weir*, 340 F 2d 74 (5th Cir 1965)

Following language appearing in *Sullivan* v *Little Hunting Park, Inc.* 396 U S 229, 240 L Ed 2d 386, 90 S Ct 400 (1969), a 42 USC §1983 case, it has been said that the correct rule in §1983 cases is that both state and federal rules on damages may be utilized, whichever better serves the policies of federal statutes. *Baskin* v *Parker*, 588 F 2d 965 (5th Cir 1979)

Nominal and punitive damages are also allowed, *Batista* v *Weir*, supra, especially where malice is involved, *Wade* v *Haynes*, 663 F 2d 778 (5th Cir. 1981), and even where they would normally not be allowed under state law. *Garrick* v *Denver*, 658 F 2d 1021 (5th Cir. 1981)

As far as Appellants can ascertain it is the general rule that absolute immunity from civil rights action is accorded legislators or others when acting as such and to the judiciary.

The individuals here involved are not alleged to be acting as either.

Any other immunities would be qualified and must be subject to factual determinations.

Merely giving a "person" title or description that associates him with the State does not immunize him from wrongful acts which violate an individual's federal rights under "color" of state law. To accept the ruling to the contrary, as held by the Michigan courts, is to preclude the violated person from a remedy in the State courts.

In summation, the Michigan courts, in this case, have said the damage action against individuals must be brought in the Court of Claims. The Legislature has said the Court

of Claims does not have jurisdiction if there is an adequate remedy in the Federal courts (MCL 600.6440). It is clear that there would be jurisdiction in the federal courts. (42 USC §1983, 28 USC §1343).

Ergo, there is no original jurisdiction in civil rights litigation involving damage claims against state associated individuals.

We submit this is not the result in any other jurisdiction and should not be in Michigan.

The posited intermediate conclusions necessary to reach the result obtained in the Courts below and the result itself are contrary to that of those reached in all other jurisdictions.

This is probably due to the chaos existing in the law of the State of Michigan regarding governmental immunity which has been described as follows:

> " . . . a legislative badminton game with governmental immunity as the shuttlecock." *Pichette* v *Manistique Pub. Schools*, 50 Mich App 770, 213 NW 2d 784 (1973)

The history of governmental immunity law in Michigan requires reversal here to obtain some recognition by Michigan of what it can and cannot do in regard to civil rights litigants' access to its courts.

Otherwise the quagmire that has long plagued the law will continue.

In 1961 the Supreme Court of Michigan declared that the unjust doctrine of governmental immunity no longer existed in Michigan. *Willams* v *City of Detroit*, 364 Mich 231, NW 2d (1961). Six months later Williams, supra, was limited to municipal corporations. *McDowell* v *State Highway Commission*, 365 Mich 268 NW2d (1961).

Between then and now no semblance or order has emerged. See, The Court and Governmental Tort Liability

in Michigan, 72 Mich Law Rev. 187 (1973); Governmental Immunity After Parker and Perry: The King Can Do Some Wrong, Vol. 1982 Detroit College of Law Review, Issue 1, p.1. The authors of those articles correctly state that two acts of the Legislature (Act No. 170, Mich Pub Acts, 1964 MCL §691.1401 and Act No. 155, 1970, MCL §691.1401, as amended) have not helped.

Dissenting opinions have become the basis of majority opinions. (Compare: *Thomas* v *State Department of Highways*, 398 Mich 1, 247 NW2d 530 (1976) and *Parker* v *City of Highland Park*, 404 Mich 183, 273 NW2d 521 (1978).

No clear pattern has emerged as regards any derivative immunity to be accorded state associated persons. (Compare: *Bush* v. *Oscoda Area* 405 Mich 716, 275 NW 2d 521 (1979) and *Lockaby* v *Wayne County*, 406 Mich 65, 276 NW 2d 1 (1979).

The considerable confusion that exists and certainly inhibits any thought of using Michigan Courts for civil rights litigation is illustrated by *Bandfield* v *Wood*, 104 Mich App 279, (1981) The action was originally brought in the Court of Claims and dismissed on the motion of the Attorney General of the State of Michigan on the ground that plaintiff was suing defendants in their individual capacities. When brought in the Circuit Court (having the same subject matter jurisdiction as the Circuit Court for the County of Wayne) the Attorney General moved to dismiss on the ground that Wood was a "State Official". Wood was a "supervisor" at a state prison. The Court of Appeals affirmed the lower court's dismissal of the motion, holding that Wood was not a "State Official".

What the Michigan cases amount to is a question, not an answer.

The Court of Appeals believes that state associated persons can not be sued in the Circuit Courts if they are "State Officials" but may be sued in the Circuit courts if they are not. The Attorney General takes the position in the

case here appealed that the individual defendants can be sued only in the Court of Claims based on their nominal status as state officials, not withstanding the fact that no judicial determination of their actual capacity has been made.

Whatever the test of immunity for state causes of action is at present, it is clear that Michigan Courts are out of line with the federal courts and other state courts, as regards subject matter jurisdiction over civil rights litigation and the effect that state immunities may have.

QUESTION II IS SUBSTANTIAL

The Orders of the Michigan Courts were not based upon jury trial issues.

However, the effect of the actions of the Courts below denied Appellants a jury trial.

The argument is simple. At the time of the adoption of the Michigan Constitution (1871) there could be no action against the sovereign or its agents, therefore there was no jury trial. On this premise it is maintained that statutory or common law refinements of the doctrine of governmental immunities do not affect the right to jury trial.

Ordinarily logic requires re-examination of the conclusion when a premise is changed.

In *Curtis* v. *Loetker* (1974) 514 US 189, 39 L Ed 2d 260, 94 S Ct. 1005 this Court considered the question of whether a jury trial was required by the Seventh Amendment to the Constitution of the United States in an action under the Civil Rights Act of 1968 (42 USC §3612). Obviously such actions did not exist at the time of the adoption of the Constitution of the United States.

This Court rejected the concept that jury trial rights extended only to common law forms of action and held they were guaranteed as to new causes of action created by Congress enforceable in an Action for damages in the "ordinary courts of law".

This is so if the parallel court systems (State and Federal) are to operate consistantly and uniformly where subject matter is the same and where federal rights are involved. If the argument is made that immunities exist to protect the public treasury and this is better done in Michigan Courts without juries, the argument must be that juries in Federal Courts are not prolifigate with public monies but state juries are. That is hardly supportable in theory or in fact.

It makes little sense to adhere to the Common Law form of action at a point in history argument where an action is obviously one for damages at law. To do so prevents jury trials of jury type cases when the original reason has changed. Judicial notice can be taken of the fact that the scope and extent of governmental immunity has changed. "Persons" historically not subject to suit now are. Their freedom from jury trial was not a sine qua non of their not being subject to such trials, only a by-product and derivative.

Logic demands that when the premise disappears so does the conclusion.

A new sylogism is needed. Jury trials are accorded where demanded in actions at law for damages. Civil Rights actions may be actions at law for damages. Where Civil Rights actions are at law for damages, a jury trial is available upon demand.

CONCLUSION

Probable Jurisdiction of the Appeal should be noted, or in the alternative, this Appeal treated as an Application for a Writ of Certiorari under 38 USC §1252.

Respectfully submitted,
John C. Carlisle
George E. Brumbaugh, Jr.
Attorneys for Appellants
18038 Mack Ave.
Grosse Pointe, Mi. 48224
(313) 884-1234

ON APPEAL FROM THE
SUPREME COURT OF MICHIGAN

APPELLANTS' APPENDIX

ORDER OF SUPREME COURT (APPENDIX A)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 20th day of April in the year of our Lord one thousand nine hundred and eighty-three.

Present the Honorable
G. MENNEN WILLIAMS,
Chief Justice
THOMAS GILES KAVANAGH,
CHARLES L. LEVIN,
JAMES L. RYAN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
Associate Justices.

69738

STUART R. CRANE and BARBARA J. CRANE, his wife, jointly and severally,
Plaintiffs-Appellants,

v

STATE OF MICHIGAN, SYDNEY GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS, and UNKNOWN OFFICERS, jointly and severally,
Defendants-Appellees.

SC: 69738
COA: 56572
LC: 81-106368-CZ

On order of the Court, the application *in propriis personis* for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

0412

STATE OF MICHIGAN—ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 20th day of April in the year of our Lord one thousand nine hundred and eighty-three.

[SEAL]

(s) Jacqueline B. MacKinnon
Deputy Clerk

ORDER OF COURT OF APPEALS (APPENDIX B)

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Grand Rapids, on the 11th day of June in the year of our Lord one thousand nine hundred and eighty two.

Present the Honorable
Robert B. Burns
Presiding Judge
Thomas M. Burns
Glenn S. Allen, Jr.
Judges

STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly and Severally,
Plaintiffs-Appellants,

-v-

Docket No. 56572
L.C. No. 81-106368-CZ

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS and UNKNOWN OFFICIALS, Jointly and Severally,
Defendants-Appellees.

In this cause plaintiffs-appellants have filed a brief on the merits in support of their appeal and the defendants-appellees having filed a motion to affirm pursuant to GCR 1963, 817.5(3), and a brief in support of the motion and a brief on appeal and an answer in opposition thereto being filed, and due consideration thereof being had by the Court,

IT IS ORDERED that the motion to affirm be, and the same is hereby GRANTED, the Court determining that the questions raised by the plaintiffs-appellants are so unsubstantial as to need no argument or formal submission and are without merit.

Order of Court of Appeals (Appendix B)

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 18th day of June in the year of our Lord one thousand nine hundred and eighty-two.

(s) Ronald L. Dzierbicki
Clerk

ORDER OF CIRCUIT COURT (APPENDIX C)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly and Severally,

Plaintiffs,

-v-

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS AND UNKNOWN OFFICERS, Jointly and Severally,

Defendants.

Case No. 81-106368-CZ

Hon. Thomas Roumell (P-19702)

ORDER OF ACCELERATED JUDGMENT

At a session of the Court, held in the Old City County Building, City of Detroit, County of Wayne, State of Michigan, on March 6, 1981

PRESENT: Hon. Thomas Roumell
Circuit Judge

This matter having come on to be heard by the Motion of the Defendant State of Michigan, Department of Treasury for Accelerated Judgment pursuant to GCR 1963, 116.1(2) asserting that this Court lacks subject matter jurisdiction, and this Court being otherwise duly informed and advised in the premises;

NOW THEREFORE IT IS ORDERED, this Court finds and determines that it lacks subject matter jurisdiction to entertain the Complaint, and pursuant to GCR 1963, 116.1(2) grants Accelerated Judgment in favor of Defendant State of Michigan and all individual Defendants and dismisses the within Complaint.

(s) Thomas Roumell
Circuit Judge

COMPLAINT (APPENDIX D)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly and Severally,

Plaintiffs,

-vs- Case No. _____

STATE OF MICHIGAN, SYDNEY D. GOODMAN, HARRY W. JURY, JOSEPH B. FAREMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIA JOSEPH, DOUGLAS L. ROSE, UNKNOWN AGENTS, UNKNOWN PERSONS and UNKNOWN OFFICERS, Jointly and Severally,

Defendants.

COMPLAINT
and
DEMAND FOR JURY TRIAL

There is now on file in this Court a civil action arising out of the same transaction or occurrence as alleged in the Complaint. The action is pending and is No. 81-100579-CZ. The action was assigned to Judge Thomas Roumell (P-19702).

Stuart R. Crane
189 Cloverly Road
Grosse Pointe Farms,
Michigan 48236
Ph. 313-885-6021

Dated: February 12, 1981

Complaint (Appendix D)

COMPLAINT

NOW come the Plaintiffs in the above captioned action, STUART R. CRANE and BARBARA J. CRANE, his wife, Jointly, and make this their Complaint against the within named Defendants and state as follows:

1. That Plaintiffs STUART R. CRANE and BARBARA J. CRANE, his wife, are residents of Wayne County, Michigan.

2. That Defendant STATE OF MICHIGAN (hereinafter referred to as "STATE") is the governmental body which employed the other Defendants.

3. That Defendant SYDNEY D. GOODMAN (hereinafter referred to as "GOODMAN") at all times pertinent herein was employed by Defendant STATE as Revenue Commissioner.

4. That Defendant HARRY W. JURY (hereinafter referred to as "JURY") at all times pertinent herein was employed by Defendant STATE as Deputy Commissioner.

5. That Defendant JOSEPH B. FAREMOUTH (hereinafter referred to as "FAREMOUTH") at all times pertinent herein was employed by Defendant STATE as District Manager.

6. That Defendant PAUL BRICKER (hereinafter referred to as "BRICKER") at all times pertinent herein was employed by Defendant STATE as Assistant Attorney General.

7. That Defendant DALE E. SMITH (hereinafter referred to as "SMITH") at all times pertinent herein was employed by Defendant STATE as Crime Investigator.

8. That Defendants CLAUDIA JOSEPH (hereinafter referred to as "JOSEPH"), CASMERE WOJNO (hereinafter referred to as "WOJNO") and UNKNOWN AGENTS at all times pertinent herein were employed by Defendant STATE as Agents.

9. That Defendants PERSONS UNKNOWN at all times pertinent herein were employed by Defendant STATE.

10. That Defendants DOUGLAS L. ROSE (hereinafter referred to as "ROSE") and UNKOWN OFFICERS at all times pertinent herein were employed by Defendant STATE as Peace Officers.

11. Jurisdiction founded on the existence of a Federal question and amount in controversy, as this action arises under the 1st, 4th, 5th, 8th, 13th and 14th Amendments to the Constitution of the United States as hereinafter more fully appears, and the amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

12. That Plaintiffs reserve the right to amend this their Complaint upon Discovery.

COUNT I

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations as though fully set forth below.

2. That on December 9, 1980, a jeopardy assessment (see exhibit "A") was issued by Defendant PERSONS UNKNOWN against Plaintiffs and a multiplicity of other individuals and entities therein named.

3. That said jeopardy assessment was and is based upon speculation and premature conclusions.

4. That said jeopardy assessment fails to state a material claim upon which relief could be had.

5. That said jeopardy assessment by including a 100% penalty for "fraudulent intent to evade tax" falsely imputed and accused Plaintiffs with intent to commit a crime, ss; tax evasion.

6. That said jeopardy assessment as it falls upon Plaintiff is unnecessary, unwarranted, unconstitutional and denies due process without reason.

7. That Defendant STATE is not entitled to such unjust equitable process as it has failed to exhaust its remedies at law.

8. That aforesaid acts were intentional, malicious and contrary to law.

9. That contrary to law, said jeopardy assessment identifies with Plaintiffs previously held confidential social security numbers.

10. That Defendants PERSONS UNKNOWN, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

11. That as a direct result of the aforesaid acts and deeds by Defendant PERSONS UNKNOWN, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, breach of privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their names and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants PERSONS UNKNOWN, Jointly and Severally, for whatever amount Plaintiffs are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

Complaint (Appendix D)

COUNT II

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I as though fully set forth below.

2. That on December 9 and 10, 1980, alleged warrants (see exhibits "B" and "C") were issued by Defendants JURY and FAREMOUTH against Plaintiffs and other entities therein named.

3. That said alleged warrants falsely declare that Plaintiffs have had due and proper notice of assessment and demand therefore.

4. That said alleged warrants falsely impute a crime against Plaintiffs, ss; tax evasion.

5. That contrary to law, said tax warrant identifies with Plaintiffs previously confidentially hald social security numbers.

6. That said alleged warrants are unnecessary, unwarranted, unconstitutional and deny due process without reason.

7. That said acts and deeds were intentional, malicious, wrongful, unjustified, contrary to law, breach of privacy, breach of contract, constitute fraud, malfeasance and libel per se.

8. That Defendants JURY and FAREMOUTH, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

9. That as a direct result of the aforesaid acts and deeds by Defendants JURY and FAREMOUTH, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and

trauma, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking four million dollars in ordinary damages and four million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants JURY and FAREMOUTH, Jointly and Severally, for whatever amount Plaintiffs are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

COUNT III

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II as though fully set forth below.

2. That on December 10, 1980, various alleged tax liens (see exhibit "D" and "E") were drafted by Defendant GOODMAN and issued by Defendant JURY against Plaintiffs.

3. That above mentioned alleged tax liens falsely declare that taxes, which after demand for payment thereof, remain unpaid.

4. That upon information and belief said alleged tax liens were filed in order to compel Plaintiffs into being merchants in equity and force them into perpetual involuntary servitude.

5. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law, constitute fraud, breach of privacy, libel per se, malfeasance and abuse of process.

6. That Defendants GOODMAN and JURY, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

7. That as a direct result of the aforesaid acts and deeds by Defendants GOODMAN and JURY, Plaintiffs reputations have been greatly injured, Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking four million dollars in ordinary damages and four million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants GOODMAN and JURY, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

COUNT IV

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III as though fully set forth below.

2. That on December 9, 1980, Defendant SMITH did sign and verify an affidavit (see exhibit "F") for the purpose of obtaining a warrant to search Plaintiffs home and there seize property and documents therein specified.

3. That said affidavit is insufficient to justify issuance of a search warrant.

4. That contrary to law, said affidavit identifies with Plaintiffs previously confidentially held social security numbers.

5. That Defendant SMITH willfully, wrongfully and with malicious intent disclosed only selected facts and wrongfully withheld material evidence from said affidavit in order to make it appear that a crime may have been committed by Plaintiffs.

6. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law.

7. That Defendant SMITH, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within his power to so do.

8. That as a direct result of the aforesaid acts and deeds by Defendant SMITH, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking one million dollars in ordinary damages and one million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant SMITH for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

Complaint (Appendix D)

COUNT V

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV as though fully set forth below.

2. That on December 9, 1980, Defendant SMITH wrongfully caused to be issued an alleged search warrant (see exhibit "G") by the Honorable Robert H. Pytell, for the Municipal Court, Grosse Pointe Farms, Wayne County, Michigan, directing "THE SHERIFF OR ANY PEACE OFFICER" of Wayne County to search Plaintiffs residence located at 189 Cloverly Road, Grosse Pointe Farms, Wayne County, "and do there seize, tabulate and make return thereof according to law" various books, records and documents therein specified.

3. That said alleged warrant under authority of which they claimed to have acted is insufficient in law to justify a search and seizure of the property therein described.

4. That said alleged warrant is unreasonable, impermissibly broad and unconstitutionally general in nature.

5. That said alleged warrant was fraudulently obtained in that there was no evidence of a crime, no probable cause to believe a crime had been committed or that Plaintiff had committed a crime, only speculation and premature conclusions.

6. That said warrant is unwarranted, unnecessary and contrary to law in this matter being on its face nothing more than a "fishing expedition".

7. That the determination of tax liability and the recovery of taxes are civil matters and the use of a criminal search warrant constitutes an abuse of process of said Court.

8. That the records and documents sought by said alleged warrant are privileged from seizure, thus rendering said alleged warrant helpless.

9. That contrary to law, said search warrant identifies with Plaintiffs a previously confidentially held social security number.

10. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law.

11. That Defendant SMITH, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

12. That as a direct result of the aforesaid acts and deeds by Defendant SMITH, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking five million dollars in ordinary damages and five million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant SMITH for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained, and for such other and further relief as this Court may be empowered to grant.

COUNT VI

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and parag-

raphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V as though fully set forth below.

2. That Defendant ROSE was the Peace Officer in charge of and responsible for executing said alleged warrant.

3. That at or about 11:00 a.m. on December 10, 1980, Defendant ROSE and UNKNOWN OFFICERS, under the alleged authority of said alleged warrant, with evil intent and purpose, forceably and without Plaintiffs consent, entered Plaintiffs residence.

4. That Defendant ROSE then did allow, permit, encourage and/or authorize, without Plaintiffs consent, without authority and contrary to law, Defendants BRICKER, JOSEPH, WOJNO and UNKNOWN AGENTS to criminally trespass within Plaintiffs home.

5. That Defendants BRICKER, JOSEPH, WOJNO and UNKNOWN AGENTS did with evil intent, without Plaintiffs consent, unlawfully enter Plaintiffs residence, committing criminal trespass.

6. That Defendant ROSE failed to execute alleged search warrant as ordered by said Court.

7. That Defendant ROSE permitted and condoned an illegal, unwarranted and unlawful search by Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS of Plaintiffs residence.

8. That Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS did search Plaintiffs residence and without apparent purpose or direction, indiscriminately seized property, records and documents owned by Plaintiffs and other individuals and entities not named in or parties to said alleged warrant.

9. That Defendant SMITH is required by law to accompany peace officers for the sole purpose of identifying items

seized as being the item used in the commission of the alleged crime, but did in fact unlawfully search and seize.

10. That Defendant ROSE failed to make a complete and accurate tabulation of the property and things seized as required by law and order of said Court.

11. That Defendant ROSE unlawfully permitted Defendant JOSEPH to record and list on the return to search warrant (see exhibit "H") the items seized by Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS.

12. That Defendant ROSE did unlawfully and without cause, allow and permit Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS to seize an automobile, monies, gold coins, silver coins, silver bullion, tape recordings, titles of vehicle ownership, copies of current civil litigation, thus placing Plaintiff in danger of default judgments, personal correspondence, pistols, indentures of trust, minutes of various trust meeting agreements, personal address books, contracts, books, newsletters, miscellaneous publications, various and sundry office supplies, and numerous other items unknown to Plaintiffs, all which were not duly and properly recorded on the Return to Service; said actions being contrary to law and order of said Court.

13. That the seized property is or may be in de facto possession of Defendant STATE.

14. That virtually all of said items seized by Defendants BRICKER, SMITH, JOSEPH, WOJNO and UNKNOWN AGENTS are far beyond the scope of alleged warrant.

15. That Plaintiffs were not permitted to confirm inventory or otherwise verify what items had in fact been seized.

16. That Defendants BRICKER, ROSE, SMITH, UNKNOWN AGENTS and UNKNOWN OFFICERS did refuse Plaintiffs lawful request for the names of the Defendant UNKNOWN AGENTS and UNKNOWN OFFICERS.

17. That by virtue of the aforementioned execution of said warrant and the return thereto was and is grossly incomplete, inaccurate and by virtue of Defendant ROSE signing same, said return to search warrant was falsely attested to and certified, said acts being contrary to the order of said Court.

18. That said acts and deeds were intentional, malicious, wrongful, unjustified and contrary to law.

19. That Defendants BRICKER, SMITH, WOJNO, JOSEPH, ROSE and UNKNOWN OFFICERS, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

20. That as a direct result of the aforesaid acts and deeds by Defendants BRICKER, SMITH, JOSEPH, WOJNO, ROSE, UNKNOWN AGENTS and UNKNOWN OFFICERS, Plaintiffs reputations have been greatly injured. Plaintiffs have been humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous and mental anguish and trauma, invasion of their privacy, illegal seizure of their peroperty, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking five million dollars in ordinary damages and five million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, ROSE and UNKNOWN OFFICERS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and order Defendant STATE to return any property they possess to the place where it was seized, and for such other and further relief as this Court may be empowered to grant.

COUNT VII

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V and paragraphs 1-20 of Count VI as though fully set forth below.

2. That at or about 7:30 p.m. on December 10, 1980, after Defendants ROSE and UNKNOWN OFFICERS and Defendants BRICKER, SMITH, WOJNO, JOSEPH and UNKNOWN AGENTS had left the premises of 189 Cloverly Road, Grosse Pointe Farms, Wayne County, having completed an alleged execution of an alleged search warrant upon said premises, said search warrant being void thereby, an UNKNOWN AGENT arrived, did enter without Plaintiffs permission or consent said premises and did thereupon illegally seize a large pasteboard box containing unidentified records, papers and documents owned by Plaintiffs and other individuals and entities.

3. That the seized property is or may be in the de facto possession of Defendant STATE.

4. That said seizure by Defendant UNKNOWN AGENT aforementioned was intentional, malicious, wrongful, unjustified and contrary to law.

5. That as a direct and forseeable result of said illegal seizure Plaintiffs were denied of their above mentioned civil and common law rights. Plaintiffs have been greatly injured, humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants STATE and UNKNOWN AGENTS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained, and order Defendant STATE to return any property they possess to the place where it was seized, and for such other and further relief as this Court may be empowered to grant.

COUNT VIII

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V and paragraphs 1-20 of Count VI and paragraphs 1-5 of Count VII as though fully set forth below.

2. That this Court is brought and arises under 42 U.S.C. 1983 and that this Honorable Court has jurisdiction to hear such claims.

3. That Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS upon assuming their offices took an oath to uphold the Constitution of The United States and the State of Michigan.

4. That it then became the duty of said Defendants to preserve, protect and defend the civil and common law rights of Plaintiffs as guaranteed by law and said Constitutions.

5. That disregarding said sacred trust and duty Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS at all times and all places mentioned in the Common

Allegations and Counts I-VII of this Complaint, did maliciously, intentionally, and unlawfully conspire to deprive Plaintiffs of their civil and common law rights as enumerated therein.

6. That disregarding said sacred trust and duty, Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS at all times and all places mentioned in the Common Allegations and Counts I-VII of this Complaint did maliciously, intentionally and unlawfully subject and cause and/or allow Plaintiffs to be subjected to the deprivation of their rights as enumerated therein.

7. That Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE AND UNKNOWN OFFICERS, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

8. That as a direct and forseeable result of said conspiracy to deprive Plaintiffs of their above mentioned civil and common law rights, Plaintiffs have suffered the indignities enumerated in the Common Allegations and Counts I-VII of this Complaint. Plaintiffs have been greatly injured, humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained, and for such other and further relief as this Court may be empowered to grant.

COUNT IX

1. That Plaintiffs incorporate and adopt by reference paragraphs 1-12 of the Common Allegations and paragraphs 1-11 of Count I and paragraphs 1-9 of Count II and paragraphs 1-7 of Count III and paragraphs 1-8 of Count IV and paragraphs 1-12 of Count V and paragraphs 1-20 of Count VI and paragraphs 1-5 of Count VII and paragraphs 1-8 of Count VIII as though fully set forth below.

2. That this Court is brought and arises under 42 U.S.C. 1986. That this Honorable Court has jurisdiction to hear such claims.

3. That Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS upon assuming their offices took an oath to uphold the Constitutions of The United States and the State of Michigan.

4. That it then became the duty of said Defendant to preserve, protect and defend the civil and common law rights of Plaintiff as guaranteed by law and said Constitutions.

5. That disregarding said sacred duty and trust Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ANDERSON and UNKNOWN OFFICERS at all times and all places mentioned in the

Common Allegations and Counts I-VIII of this Complaint did maliciously, intentionally and unlawfully, having knowledge of wrongful and criminal acts being and about to be committed, neglected and refused to prevent or aid in preventing the commission of same when it was within their power to so do.

6. That as a direct and forseeable result of said willful negligence in the performance of their duties as proscribed by law Plaintiffs have suffered the indignities enumerated in the Common Allegations and Counts I-VIII of this Complaint. Plaintiffs have been greatly injured, humiliated, embarrassed, outraged, shamed, subjected to great emotional distress, grievous mental anguish and trauma, invasion of their privacy, illegal seizure of their property, criminal prosecution, suffered great financial loss, compelled to undergo numerous unnecessary expenses to defend themselves and clear their name and were otherwise damaged in such manner that they are seeking two million dollars in ordinary damages and two million dollars in exemplary damages and/or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants GOODMAN, JURY, FAREMOUTH, BRICKER, SMITH, WOJNO, JOSEPH, UNKNOWN AGENTS, PERSONS UNKNOWN, ROSE and UNKNOWN OFFICERS, Jointly and Severally, for whatever amount they are found to be entitled, plus all costs, interest, attorney fees so wrongfully sustained and for such other and further relief as this Court may be empowered to grant.

Respectfully submitted,
(s) Stuart R. Crane, *Pro per*

(s) Barbara J. Crane, *his wife*

STATE OF MICHIGAN)
) ss VERIFICATION
COUNTY OF WAYNE)

I, Stuart R. Crane, being first duly sworn, deposes and says that I have read the foregoing Complaint and that the facts stated therein are true and correct to the best of my knowledge and belief.

(s) Stuart R. Crane, *pro per*

Subscribed and sworn to before me
this 12th day of February, 1981.

(s) ?
Notary Public

DEMAND FOR JURY TRIAL

Plaintiffs hereby make demand for a jury trial in the above entitled matter.

Respectfully submitted,
(s) Stuart R. Crane, *pro per*
189 Cloverly Road
Grosse Pointe Farms, Michigan
48236
Ph. 313-343-0099

Dated: February 12, 1981

(CIRCUIT COURT TRANSCRIPT OF MARCH 6, 1981) (APPENDIX E)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

STUART R. CRANE,
BARBARA J. CRANE,
Plaintiffs,

VS #81-106-368-CZ

STATE OF MICHIGAN, SYDNEY D. GOODWIN, HARRY W. JURY, JOSEPH B. FAIRMOUTH, PAUL BRICKER, DALE E. SMITH, CASMERE WOJNO, CLAUDIAN JOSEPH, DOUGLAS L. ROSE,
Defendants.

REPORTER'S NOTICE OF FILING OF TRANSCRIPT

TO: STEPHEN DALLOS, *Deputy Clerk*
Court of Appeals
900 First Federal Building
Detroit, Michigan 48226

Mr. Stuart Crane
189 Cloverly
Grosse Pointe Farms, Michigan

Court of Appeals
Mr. Alan Broad
1200 6th Street
Detroit, Michigan 48226

PLEASE TAKE NOTICE, that I have this day filed in the Circuit Court in the above-entitled matter a true and correct transcript of the testimony taken at the trial thereof

in accordance with the order of appellant's attorney filed therein.

(s) Dolores Crabtree, CSR-2580
Court Reporter
Tappert Court Reporting Service, Inc.
1248 Free Press Building
Detroit, Michigan 48226
963-6448

Detroit, Michigan
Dated: 8-4-81

(2)

Detroit, Michigan
Friday, March 6, 1981

THE CLERK OF THE COURT: Crane versus State of Michigan, 81-106 368 CZ.

THE COURT: I recognize the parties and the action. What's different about what we had before?

MR. BROCKMAN: For the record, E. David Brockman, Attorney General, appearing on behalf of the State of Michigan and all of the individual defendants.

The Court's point is well taken. There is nothing different other than the matter that was dismissed by the Court on February 20th, which was another lawsuit filed in January. This lawsuit was filed in February, February the 13th. The point being, your Honor, that the lawsuit before the Court today is precisely the same that was before your Honor on the 20th of February. It arises out of the same transaction.

THE COURT: Mr. Brockman, may I ask you, this was filed in relation to the case that the Court acted on the last time?

MR. BROCKMAN: Exactly. It arises out of the same circumstance.

THE COURT: The filing date makes no difference?

(Circuit Court Transcript of March 6, 1981) (Appendix E)

(3)

MR. BROCKMAN: I think we have to treat it as a separate action, under the Court Rules. That's why we've moved for accelerated judgment.

THE COURT: You're arguing, I take it —

MR. BROCKMAN: The argument is the same. What I'm asking the Court to do today and I did not ask the Court to do on the 20th of February, is to grant to the State of Michigan and all of the individual defendants, the award of costs and attorney fees. Basing that request on the fact that after your Honor entered the order granting accelerated judgment on February 20th, we appeared before Judge Dingeman in conjunction with another matter on a motion for accelerated judgment, again, involving the same Plaintiffs, and within an hour after your Honor entered your order, Judge Dingeman also entered an order.

I, at that time, met with Mr. Crane and asked him if he would stipulate to a dismissal of all of the pending lawsuits at that time based on the fact that it was clear, at that point, at least I felt it was clear, that the Plaintiffs were in the wrong court. I informed Mr. Crane that should it be necessary for the State to bring another motion, we would most vigorously request the award of costs and attorney fees.

We gave Mr. Crane a week to advise (4) us as to whether or not he would voluntarily stipulate to a dismissal of not only this matter, but a matter pending before Judge Duggan in a matter pending in Macomb County. The answer was silence, and so we moved for a dismissal of this matter as well as the matter before Judge Duggan. Judge Duggan entered an order this morning dismissing his matter, and we are now before the Court asking not only for judgment of accelerated judgment, but award of costs and attorney fees because we feel it should have been abundantly clear that they were not in the proper court.

(Circuit Court Transcript of March 6, 1981) (Appendix E)

We are now being put to the task of having to come in here and prepare the related paper work and waste our time and the Court's time in asking for this order. I would ask the Court to enter an accelerated judgment here and award costs and reasonable attorney fees.

THE COURT: Mr. Crane?

MR. CRANE: First of all, your Honor, Mr. Brockman did ask me on the 20th if I would consider a dismissal and he said to let me know in one week's time.

Five days later, according to the date when they filed this motion, they did not wait one week. That's the first statement I'd like to make in answer to this.

Second, his statement is that this is essentially the same case. The Plaintiffs in the other case of the Estate of Beatrice M. Crane, of which I happen to (5) be one of her offspring, one of twelve children, and I did not bring that case. That case is a separate case. This is the case concerning the search and seizure of my home. The case in Macomb County, this is a case of the search and seizure of Mr. Wood's home, who is not a party to this case. His home was searched and seized on the same day, and he has brought a case in Macomb County. They have said that in each of these courts that I have filed five cases. This is not the case I am a party of three cases, one of which has to do with the Burgandy Hotel where the State ran up a $75,000.00 debt to me and didn't pay it, for Welfare people. They contracted for it and I am still not paid. This debt is in excess of four years old now. This is for the whole problem. They refused to pay me monies that were lawfully due me.

Anyway, the case before us here has only to do with the search and seizure of my home. It arises under the 4th Amendment, the 14th Amendment of the Constitution of the United States, therefore, it is a federal question, and this Court does have jurisdiction, and it arises under the Article 1, Section 11 and Article 1, Section 17 of the State Con-

stitution and Article 3, Section 2 of the Michigan State Constitution of 1963. It also arises under MCL 205.25.

THE COURT: What are you seeking as the ultimate; what are your prayers?

MR. CRANE: My prayer is for damages (6) against the individuals who violated my home and illegally conspired to do so. By the way, your Honor, when they came in—

THE COURT: You can stop right there because that's what it was, determine whether or not this Court has jurisdiction or whether the Court of Claims has jurisdiction to hear your case and your claim for damages.

You see, no matter how you couch it with nice words which suggest Federal jurisdiction and Federal questions, in a case of this kind arising out of the set of facts that are here involved that you have urged this case and you have urged in other cases, it all comes out to money damages that you seek.

Now, if you were seeking for equitable relief such as a restraining order or to do something or not to do something, you're in the right court, but under the circumstances if you're looking for money, your claim has got to be in the Court of Claims first. That's where we're at, sir.

You're very well versed. You understand exactly what's going on and you're representing yourself. You're not an attorney, and eminently qualified. You have done an outstanding job, in the Court's view, as an attorney, even though you're not. Therefore, I don't think the Court has taken advantage of you, and I certainly don't think Mr. Brockman has taken advantage of you.

The fact is—

(7)

MR. CRANE: These are constitutional questions that—

THE COURT: No, these are constitutional questions that can be answered within the realm and within the scope of the judgment that you seek in the Court of Claims. It

doesn't mean that they hear your claim there with shutters, with mental shutters. They will listen to all of it, what your contentions are, to decide whether or not you have a claim against the State. That's the place to go.

Now, I'm not going to assess any damages. I'm not going to assess any costs, and I'm not going to assess any attorney fees. The reason I'm doing it is because I think you and your family are properly concerned that you at least have somebody in some form to hear your claim. I don't think you're really—you're aggravated, I think. I think you're mad and unhappy, but that's neither here nor there. I think you're still entitled to have somebody hear your claim. I think you ought to go to the right place to have that done. The Court of Claims is the place to have that done.

MR. CRANE: Your Honor, I just found out yesterday by accident that they intend to sell my automobile next Tuesday. I have not been notified of any such sale. It is to be auctioned. I notice it's in the Court's advertisements, or somebody called me and told me, and while this is pending, because I do intend to appeal, I was wondering (8) if this is the proper time to ask for an injunction against the sale?

THE COURT: This is not the proper time, because this Court does not have that in this Complaint here, and I doubt whether or not this is—well, for an injunction, you would have to come into the Circuit Court of the jurisdiction of where the sale is going to be conducted.

MR. CRANE: They came into my private locked garage to get the car.

THE COURT: The accelerated judgment will be granted for the reasons stated on the record.

MR. BROCKMAN: Thank you, your Honor.

THE COURT: No costs.

(Circuit Court Transcript of March 6, 1981) (Appendix E)

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, Dolores Crabtree, do hereby certify that I reported in stenotype the proceedings had in open court in the matter of Stuart R. Crane v State of Michigan, et al, Case No. 81-106 368 CZ, before the HONORABLE THOMAS ROUMELL, Circuit Court Judge, Detroit, Michigan, at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form under my direction and that the foregoing transcript is a full, true and correct transcription of my stenotype notes.

(s) Dolores Crabtree, CSR-2580
1248 Free Press Building
Detroit, Michigan 48226
963-6448